



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 220523-0119]

RIN 0648-BL16

Atlantic Highly Migratory Species; Atlantic Bluefin Tuna and North Atlantic Albacore Quotas

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: In this final rule, NMFS modifies the baseline annual U.S. quota and subquotas for Atlantic bluefin tuna and the baseline annual U.S. North Atlantic albacore tuna (northern albacore) quota. This action is necessary to implement binding recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT) adopted in 2021, as required by the Atlantic Tunas Convention Act (ATCA), and to achieve domestic management objectives under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). NMFS also adjusts the 2022 bluefin tuna Reserve category quota and the 2022 baseline northern albacore quota to account for available underharvest from 2021, consistent with the Atlantic tunas quota regulations. NMFS further recalculates the bluefin tuna Purse Seine and Reserve category quotas that were announced earlier this year, to reflect the quotas in this final rule.

DATES: This final rule is effective on *[insert date 30 days after date of publication in the FEDERAL REGISTER]*.

ADDRESSES: Copies of this final rule and supporting documents are available from the Highly Migratory Species (HMS) Management Division website at <https://www.fisheries.noaa.gov/topic/atlantic-highly-migratory-species> or by contacting Carrie Soltanoff at carrie.soltanoff@noaa.gov or 301-427-8503.

FOR FURTHER INFORMATION CONTACT: Carrie Soltanoff (carrie.soltanoff@noaa.gov), Larry Redd, Jr. (larry.redd@noaa.gov), or Steve Durkee (steve.durkee@noaa.gov) at 301-427-8503.

SUPPLEMENTARY INFORMATION: Atlantic tunas fisheries are managed under the authority of ATCA (16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Act (16 U.S.C. 1801 *et seq.*). The 2006 Consolidated Atlantic HMS Fishery Management Plan (2006 Consolidated HMS FMP) and its amendments are implemented by regulations at 50 CFR part 635. Section 635.27(a) divides the U.S. bluefin tuna quota recommended by ICCAT and as implemented by the United States among domestic fishing categories and provides the annual bluefin tuna quota adjustment process. Section 635.27(e) implements the ICCAT-recommended U.S. northern albacore quota and provides the annual northern albacore quota adjustment process.

Background information about the need to modify the baseline annual U.S. quota and subquotas for Atlantic bluefin tuna and the baseline annual U.S. northern albacore quota was provided in the preamble to the proposed rule (87 FR 12648, March 7, 2022) and most of that background information is not repeated here. The comment period for the proposed rule closed on April 6, 2022. NMFS received one written comment and did not receive any oral comments at a public webinar. The comment received, and the response to that comment, is summarized below in the Response to Comments section.

Consistent with the regulations regarding annual bluefin tuna and northern albacore quota adjustment, NMFS annually announces the addition of available underharvest, if any, to the bluefin tuna Reserve category and to the northern albacore

quota in a **Federal Register** notice once catch (landings and dead discards) information is available. Preliminary data have become available to NMFS since publication of the proposed rule. These preliminary data do not necessarily represent the complete and quality-controlled catch data that will become available later in the year and that will be submitted to ICCAT for 2021. However, NMFS anticipates that any changes in the data as a result of this additional analysis would be minor and would not change the amount of allowable carryover into 2022 for either bluefin tuna or northern albacore. Notice of the quota adjustment for 2021 underharvest is included in this final rule to provide the regulated community with information about the adjusted quota balances.

NMFS has prepared an Environmental Assessment (EA), Regulatory Impact Review (RIR), and Final Regulatory Flexibility Analysis (FRFA), which analyze the anticipated environmental, social, and economic impacts of several alternatives for each of the major issues contained in this final rule. A summary of the analyses is provided below. The full list of alternatives and their analyses are provided in the final EA/RIR/FRFA and are not repeated here.

A copy of the final EA/RIR/FRFA prepared for this final rule is available from NMFS (see **ADDRESSES**).

Bluefin Tuna Annual Quota and Subquotas

Quotas and Domestic Allocations

Under ICCAT Recommendation 21-07, adopted at the November 2021 ICCAT meeting, the annual U.S. bluefin tuna quota is 1,316.14 mt, plus 25 mt to account for bycatch related to pelagic longline fisheries in the Northeast Distant gear restricted area (NED), resulting in a total of 1,341.14 mt. The 1,316.14-mt quota is an increase of 68.28 mt (5.5 percent) from the 1,247.86-mt level established in the 2018 quota rule (83 FR 51391, October 11, 2018). All total allowable catch (TAC), quota, and weight information provided in this action are whole weight (ww) amounts.

This action implements the ICCAT-recommended quota of 1,341.14 mt, which would remain in effect until changed (for instance as a result of a new ICCAT bluefin tuna TAC and U.S. quota recommendation). The ICCAT-recommended bluefin tuna quota is divided among the established regulatory domestic bluefin tuna subquota categories. To calculate the subquotas under the existing regulations, 68 mt first is subtracted from the baseline annual U.S. bluefin tuna quota and allocated to the Longline category quota. This amount was first provided through Amendment 7 to the 2006 Consolidated HMS FMP to facilitate the category’s ability to account for both landings and dead discards within the quota, consistent with the historical separate dead discard allocation. Second, the remaining quota is divided among the categories according to the following percentages: General—47.1 percent; Angling—19.7 percent; Harpoon—3.9 percent; Purse Seine—18.6 percent; Longline—8.1 percent (plus the 68-mt initial allocation); Trap—0.1 percent; and Reserve—2.5 percent. The resulting subquotas will be codified at § 635.27(a) when this final rule becomes effective and will remain in effect until changed. Within the bluefin tuna quota implemented in this action and consistent with the ICCAT-recommended limit on the harvest of school bluefin tuna (measuring 27 to less than 47 inches curved fork length), the school bluefin tuna subquota is 134.1 mt. The 25-mt NED allocation is in addition to these subquotas.

The table below shows the quotas and subquotas that result from applying this process, using the current subquota formula and regulations. In May 2021, NMFS published a proposed rule for Draft Amendment 13 to the 2006 Consolidated HMS FMP (86 FR 27686, May 21, 2021) that proposed modifications to the category quotas. At the time of this rulemaking, NMFS has not yet issued a final rule for Amendment 13, and the quotas and subquotas in Table 1 are not affected by Amendment 13 at this time.

Table 1 – Annual Atlantic Bluefin Tuna Quotas (in metric tons)

Category	Annual Baseline Quota	Subquotas		
General	587.9			
		January-March ¹	31.2	
		June-August	293.9	
		September	155.8	
		October-November	76.4	
		December	30.6	
Harpoon	48.7			
Longline	169.1			
Trap	1.2			
Purse Seine	232.2			
Angling	245.9			
		School	134.1	
		Reserve		24.8
		North of 39°18' N. lat.		51.6
		South of 39°18' N. lat.		57.7
		Large School/Small Medium	106.1	
		North of 39°18' N. lat.		50.1
		South of 39°18' N. lat.		56.0
		Trophy	5.7	
		North of 39°18' N. lat.		1.9
		South of 39°18' N. lat.		1.9
		Gulf of Mexico		1.9
Reserve	31.2			
U.S. Baseline Quota	1,316.14 ²			
Total U.S. Quota, including 25 mt for NED (Longline)	1,341.14 ²			

¹ January 1 through the effective date of a closure notice filed by NMFS announcing that the January subquota is reached or projected to be reached, or through March 31, whichever comes first.

² Totals subject to rounding error.

In addition to the final measures, in the EA for this action, NMFS analyzed a no action alternative that would maintain the current U.S. annual bluefin tuna quota of 1,247.86 mt and the current subquotas. The EA for this action describes the impacts of the no action alternative and the preferred alternative finalized here.

Recalculation of Quota Available to Atlantic Tunas Purse Seine Category and Reserve Category

Pursuant to § 635.27(a)(4), NMFS annually determines the amount of quota available to the Atlantic Tunas Purse Seine category participants, based on their bluefin tuna catch (landings and dead discards) in the prior year, and reallocates the remainder to the Reserve category. Because this action increases the U.S. baseline quota and subquotas, NMFS also recalculates the 2022 Purse Seine and Reserve category quotas in

this final rule. NMFS previously announced that 55 mt were available to the Purse Seine category for 2022, and the amount of Purse Seine category quota to be reallocated to the Reserve category was 164.5 mt (219.5 mt less 55 mt available to the Purse Seine category) (87 FR 5737, February 2, 2022). To account for the ICCAT quota increase addressed in this rule, NMFS first adjusts the 2022 Purse Seine category quota to reflect the ICCAT quota increase. As a result, the baseline Purse Seine category quota initially increases by 12.7 mt to 232.2 mt. NMFS then recalculates the amounts of quota available to individual Purse Seine category participants for 2022 using the revised baseline Purse Seine category quota (232.2 mt). As a result of this recalculation, 58 mt are available overall for Purse Seine category participants in 2022, based on the cumulative amounts available to individual participants under the regulations at § 635.27(a)(4)(v). NMFS will notify Purse Seine category participants of the adjusted amount of quota available for their use in 2022 through the Individual Bluefin Quota (IBQ) electronic system and in writing.

The remaining 174.2 mt (232.2 mt less 58 mt available to the Purse Seine category) is added to the 2022 Reserve category quota. This final rule also increases the baseline annual Reserve category quota by 1.7 mt from 29.5 mt to 31.2 mt based on the ICCAT baseline quota increase and the existing Reserve category quota percentage. Thus, the recalculated 2022 Reserve category quota is: 29.5 mt (current baseline) + 1.7 mt (reflecting ICCAT baseline quota increase) + 174.2 mt (transfer to Reserve following Purse Seine adjustments reflecting ICCAT baseline quota increase), for a total of 205.4 mt. The 2022 Reserve category quota is further adjusted from this recalculated total as described below.

Adjustment of the 2022 Bluefin Tuna Reserve Category Quota for Underharvest

Consistent with the regulations regarding annual bluefin tuna quota adjustment at § 635.27(a), NMFS annually announces the addition of available underharvest, if any, to

the bluefin tuna Reserve category, after catch information is available. Under ICCAT Recommendation 17-06, as implemented in the U.S. quota adjustment regulations at § 635.27(a)(10), the maximum underharvest that a Contracting Party may carry forward from one year to the next is 10 percent of its initial catch quota, which, for the United States, was 127.29 mt for 2021 (10 percent of 1,272.86 mt).

For 2022, NMFS is carrying forward the full, allowable 127.29 mt. In 2021, the adjusted bluefin tuna quota was 1,400.15 mt (baseline quota of 1,272.86 mt + 127.29 mt of 2020 underharvest carried over to 2021 (86 FR 54659, October 4, 2021)). The total 2021 bluefin tuna catch, including landings and dead discards, was 1,184.5 mt, which is an underharvest of 215.65 mt from the 2021 adjusted quota and which exceeds the allowable carryover of 127.29 mt. When carrying over underharvest from one year to the next, NMFS uses the underharvest to augment the bluefin tuna Reserve category quota. Thus, for 2022, NMFS augments the Reserve category quota with the allowable carryover of 127.29 mt.

Effective January 28, 2022, NMFS transferred 26 mt of Reserve category quota to the General category (87 FR 5737, February 2, 2022). Thus, the adjusted 2022 Reserve category quota as of the effective date of this action is: 29.5 mt (current baseline) + 1.7 mt (reflecting ICCAT baseline quota increase) + 174.2 mt (transfer to Reserve following Purse Seine adjustments reflecting ICCAT baseline quota increase) – 26 mt (January quota transfer) + 127.29 mt (underharvest carryover in this action), for a total of 306.69 mt.

Northern Albacore Annual Quota

Domestic Quota

Although an increase in the U.S. northern albacore quota to 711.5 mt was recommended for 2021 in ICCAT Recommendation 20-04, NMFS did not codify the quota increase at that time due to the low level of northern albacore landings compared to

the baseline quota, as described in the rule to adjust the 2021 northern albacore, swordfish, and bluefin tuna Reserve category quotas (86 FR 54659, October 4, 2021).

At its 2021 annual meeting, under Recommendation 21-04, ICCAT adopted a management procedure for northern albacore and maintained the 711.5-mt U.S. northern albacore quota for 2022 and 2023. Accordingly, this action modifies the baseline annual U.S. northern albacore quota from 632.4 mt, as established in the 2018 quota rule, to 711.5 mt. The associated EA for this action also analyzes the effects of three-year annual quotas of up to 950 mt, where the quota is set through application of the harvest control rule within Recommendation 21-04's northern albacore management procedure. This level of 950 mt is derived from the maximum allowable catch limit recommended in the northern albacore management procedure. The maximum catch limit of 50,000 mt represents an increase of approximately 32 percent over the current TAC of 37,801 mt. Assuming the portion of the overall quota allocated to the United States remains the same in future years under the management procedure, such an increase would result in a maximum annual baseline U.S. quota of 950 mt. This analysis anticipates that NMFS would implement U.S. northern albacore quotas as recommended by ICCAT in accordance with the management procedure, up to the analyzed maximum baseline quota of 950 mt. The baseline quota would remain at 711.5 mt annually until changed by ICCAT. NMFS anticipates implementing any new baseline quotas through final rulemaking, assuming no new management measures are adopted or other relevant changes in circumstances occur. Additionally, consistent with current practice, NMFS annually would provide notice to the public in the **Federal Register** of the baseline northern albacore quota with any annual adjustments as allowable for over- and underharvest, as appropriate. NMFS would evaluate the need for any additional environmental analyses or for proposed and final rulemaking when a new quota is adopted by ICCAT and implemented by NMFS.

In addition to the final measures, in the EA for this action, NMFS analyzed a no action alternative that would maintain the current U.S. annual northern albacore quota of 632.4 mt, as well as an alternative that would implement the ICCAT-recommended 711.5-mt U.S. annual northern albacore quota without considering a maximum quota under the northern albacore management procedure. The EA for this action describes the impacts of these two alternatives and the preferred alternative finalized here.

Adjustment of the 2022 Northern Albacore Quota

Consistent with regulations at § 635.27(e), NMFS adjusts the U.S. annual northern albacore quota for allowable underharvest, if any, in the previous year. NMFS makes such adjustments consistent with ICCAT carryover limits when catch information for the prior year is available. Under ICCAT Recommendation 21-04, the maximum underharvest that a Contracting Party may carry forward from one year to the next is 25 percent of its initial catch quota, which, relevant to 2022, would be 177.9 mt for the United States (25 percent of 711.5 mt under Recommendation 20-04).

In 2021, the adjusted northern albacore quota was 790.5 mt (baseline quota of 632.4 mt plus 158.1 mt of 2020 underharvest carried forward to 2021, based on 25 percent of the 632.4-mt quota in place for 2020) (86 FR 54659, October 4, 2021). The total 2021 northern albacore landings were 272 mt, which is an underharvest of 518.5 mt of the 2021 adjusted quota. Of this underharvest, 177.9 mt may be carried forward to the 2022 fishing year. Thus, the adjusted 2022 northern albacore quota is 711.5 mt plus 177.9 mt, for a total of 889.4 mt.

Response to Comments

Written comments can be found at www.regulations.gov by searching for NOAA-NMFS-2022-0024. Below, NMFS summarizes and responds to the comment made specifically on the proposed rule during the comment period.

Comment 1: A commenter suggested that, for conservation reasons, NMFS should reduce rather than increase the northern albacore and bluefin tuna overall quotas.

Response: The western Atlantic bluefin tuna TAC adopted by ICCAT is consistent with the advice of ICCAT's scientific body, the Standing Committee on Research and Statistics (SCRS). For management in 2022 under an interim conservation and management plan, ICCAT identified the selected TAC as precautionary, based on the results of the 2021 stock assessment, and as one that prevents overfishing with a high probability, prioritizes continued stock growth, including into the long-term, and ensures relative stability by avoiding a large fluctuation in catches. The northern albacore TAC resulted from the harvest control rule and management procedure adopted by ICCAT. The harvest control rule, management procedure, and resultant TAC support ICCAT's management objectives for the northern albacore stock, including to maintain the stock in the green quadrant of the Kobe plot (*i.e.*, not overfished and not undergoing overfishing), with at least a 60-percent probability, while maximizing long-term yield from the fishery. NMFS has determined that implementing the U.S. bluefin tuna and northern albacore baseline quotas is consistent with the ICCAT recommendations and NMFS' conservation and management obligations under the Magnuson-Stevens Act and ATCA to provide a reasonable opportunity to harvest the ICCAT-recommended quotas. Furthermore, ATCA prohibits NMFS from taking an action that "may have the effect of increasing or decreasing any allocation or quota of fish or fishing mortality level" set by ICCAT. 16 U.S.C. 971d(c)(3). NMFS is committed to the sustainable, science-based management of bluefin tuna and northern albacore, and is supportive of ICCAT's work toward adopting stock management recommendations using a management procedure for bluefin tuna, which ICCAT has recommended and has been adopted for northern albacore, to manage fisheries more effectively in the face of identified uncertainties. Reducing the quotas for either stock is not warranted from a conservation and management perspective.

Classification

NMFS is issuing this rule pursuant to section 305(d) of the Magnuson-Stevens Act. The NMFS Assistant Administrator has determined that the final rule is consistent with the 2006 Consolidated HMS FMP and its amendments, other provisions of the Magnuson-Stevens Act, ATCA, and other applicable law.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

This final rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

A Final Regulatory Flexibility Analysis (FRFA) was prepared for this rule. The FRFA incorporates the initial regulatory flexibility analysis (IRFA), a summary of the significant issues raised by the public comments in response to the IRFA, NMFS' responses to those comments, and a summary of the analyses completed to support the action. The full FRFA is available from NMFS (see **ADDRESSES**). A summary is provided below.

Section 604(a)(1) of the Regulatory Flexibility Act (RFA) requires Agencies to state the need for, and objective of, the final action. The purpose of this rulemaking is, consistent with the 2006 Consolidated HMS FMP objectives, the Magnuson-Stevens Act, ATCA, and other applicable laws, to analyze the impacts of the alternatives for implementing the ICCAT-recommended U.S. bluefin tuna and northern albacore quotas and allocating the bluefin tuna quota per the codified quota regulations. The objective of this rulemaking is to implement ICCAT recommendations consistent with ATCA and achieve domestic management objectives under the Magnuson-Stevens Act. See Section 1 of the EA for a full description of the need for and objectives of the final rule.

Section 604(a)(2) of the RFA requires a summary of significant issues raised by the public in response to the IRFA, a summary of the agency's assessment of such issues,

and a statement of any changes made as a result of the comments. NMFS received one comment on the proposed rule during the comment period. A summary of that comment and the Agency's response are described above. That comment did not refer to the IRFA or the economic impacts of the rule.

Section 604(a)(3) of the RFA requires the response of the agency to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA) in response to the proposed rule, and a detailed statement of any change made to the proposed rule in the final rule as a result of the SBA comments. NMFS did not receive comments from the Chief Counsel for Advocacy of the SBA in response to the proposed rule.

Section 604(a)(4) of the RFA requires Agencies to provide descriptions of, and where feasible, an estimate of the number of small entities to which the rule would apply. NMFS established a small business size standard of \$11 million in annual gross receipts for all businesses in the commercial fishing industry (NAICS 11411) for RFA compliance purposes. The Small Business Administration (SBA) has established size standards for all other major industry sectors in the United States, including the scenic and sightseeing transportation (water) sector (NAICS code 487210), which includes for-hire (charter/party boat) fishing entities. The SBA has defined a small entity under the scenic and sightseeing transportation (water) sector as one with average annual receipts (revenue) of less than \$8.0 million.

NMFS considers all HMS permit holders, both commercial and for-hire, to be small entities because they had average annual receipts of less than their respective sector's standard of \$11 million and \$8 million. Regarding those entities that would be directly affected by the preferred alternatives, the average annual revenue per active pelagic longline vessel is estimated to be \$202,000, based on approximately 90 active vessels that in total produced an estimated \$18.2 million in revenue in 2020, well below

the NMFS small business size standard for commercial fishing businesses of \$11 million. No single pelagic longline vessel has exceeded \$11 million in revenue in recent years.

Other non-longline HMS commercial fishing vessels typically earn less revenue than pelagic longline vessels and, thus, would also be considered small entities. Based on 2021 permit information, NMFS predicts that the preferred alternatives would apply to the following numbers of non-pelagic longline permit holders that fish commercially or engage in commercial activities: 2,730 General category, 4,055 Charter/Headboat, 35 Harpoon category, and 34 seafood dealers that purchase bluefin tuna and northern albacore. There are no Purse Seine category permits issued currently; however there are five historical participants in the purse seine fishery that are allocated some portion of the category's available bluefin tuna quota under regulations adopted in 2015. These participants may lease that quota to other category participants or pelagic longline vessels through the Individual Bluefin Quota (IBQ) leasing program.

NMFS has determined that the preferred alternatives would not likely directly affect any small organizations or small government jurisdictions defined under RFA, nor would there be disproportionate economic impacts between large and small entities.

This action would apply to all participants in the Atlantic tuna fisheries, *i.e.*, to the over 7,000 permit holders that held an Atlantic HMS Charter/Headboat or an Atlantic Tunas permit as of October 2021. This final rule is expected to directly affect commercial and for-hire fishing vessels that possess an Atlantic Tunas permit or Atlantic HMS Charter/Headboat permit. It is unknown what portion of HMS Charter/Headboat permit holders actively participate in the bluefin tuna and northern albacore fisheries or provide fishing services for recreational anglers. As summarized in the 2021 SAFE Report for Atlantic HMS, there were 7,104 commercial Atlantic tunas or Atlantic HMS permits in 2021, categorized as follows: 2,730 in the Atlantic Tunas General category; 35 in the Atlantic Tunas Harpoon category; 284 in the Atlantic Tunas Longline category; 2 in the

Atlantic Tunas Trap category; and 4,055 in the HMS Charter/Headboat category. The 90 active pelagic longline vessels described above are a subset of the 284 Atlantic Tunas Longline permits issued, 136 of which received IBQ shares. This constitutes the best available information regarding the universe of permits and permit holders recently analyzed. NMFS has determined that this action would not likely directly affect any small government jurisdictions defined under the RFA.

Section 604(a)(5) of the RFA requires agencies to describe any new reporting, record-keeping, and other compliance requirements. This action does not contain any new collection of information, reporting, or record-keeping requirements.

Section 604(a)(6) of the RFA requires Agencies to describe the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.

This rulemaking implements the recently adopted ICCAT-recommended U.S. bluefin tuna and northern albacore quotas and, for bluefin tuna, applies the allocations for each quota category per the codified quota regulations. This action would be consistent with ATCA, under which the Secretary promulgates regulations as necessary to implement binding ICCAT recommendations.

As described below, NMFS analyzed several different alternatives in this rulemaking and provides rationales for identifying the preferred alternatives to achieve the desired objectives. The FRFA assumes that each permit holder will have similar catch and gross revenues to show the relative impact of the final action on permit holders.

For bluefin tuna, NMFS analyzed a no action alternative, Alternative A1, which would maintain the current U.S. annual bluefin tuna quota of 1,247.86 mt and the current

subquotas. NMFS also analyzed Alternative A2, the preferred alternative, which would increase the U.S. annual bluefin tuna quota, as described below.

NMFS has estimated the average impact of establishing the increased annual U.S. baseline bluefin tuna quota for all domestic quota categories under the preferred alternative on individual categories and the permit holders within those categories. As mentioned above, the 2021 bluefin tuna ICCAT recommendation increased the annual U.S. baseline bluefin tuna quota for 1,316.14 mt and continues to provide 25 mt annually for incidental catch of bluefin tuna related to directed longline fisheries in the NED. The annual U.S. baseline bluefin tuna subquotas would be adjusted consistent with the process (*i.e.*, the formulas) established in Amendment 7 and as codified in the quota regulations (as shown in Table 1), and these amounts (in mt) would be codified. In May 2021, NMFS published a proposed rule for Draft Amendment 13 to the 2006 Consolidated HMS FMP (86 FR 27686, May 21, 2021) that proposed modifications to the category quotas. At the time of this rulemaking, NMFS has not yet issued a final rule for Amendment 13, and Amendment 13 does not affect the measures in this action.

To calculate the average ex-vessel bluefin tuna revenues under this action, NMFS first estimated potential category-wide revenues. The most recent ex-vessel average price per pound information for each commercial quota category is used to estimate potential ex-vessel gross revenues under the subquotas in this action (*i.e.*, 2021 prices for the General, Harpoon, Longline/Trap categories, and 2015 prices for the Purse Seine category). The baseline subquotas in this action could result in estimated gross revenues of \$12.3 million annually, if fully utilized. Note that in recent years, the Purse Seine category has not landed any bluefin tuna and has therefore been distributed 25 percent of the Purse Seine category quota. The remaining 75 percent of the Purse Seine category quota has been transferred to the Reserve category, which typically is then transferred to the General category. (This is a simplification for the purposes of this analysis. Reserve

category quota can be transferred to any other category after consideration of regulatory criteria). The Purse Seine category quota distributed to participants is available for leasing to Atlantic Tunas Longline permit holders under the IBQ Program. The following quota category amounts assume the 174.2 mt is transferred to the General category (75 percent of the purse seine quota) and 58.1 mt is leased to the pelagic longline fishery (25 percent of the purse seine quota). Potential revenues for each category are as follows: General category: \$9.3 million (762.1 mt multiplied by \$5.55/lb); Harpoon category: \$660,289 (48.7 mt multiplied by \$6.15/lb); Purse Seine category: \$0 million (0 mt multiplied by \$3.21/lb); Longline category: \$2.3 million (227.2 mt multiplied by \$4.52/lb); and Trap category: \$10,556 (1.2 mt multiplied by \$3.99/lb).

Using the above methodology, the current baseline subquotas under Alternative A1 could result in estimated gross revenues of \$11.6 million annually, if fully utilized. The following quota category amounts assume the 164.5 mt is transferred to the General category (75 percent of the purse seine quota) and 55 mt is leased to the pelagic longline fishery (25 percent of the purse seine quota). Potential revenues for each category are as follows: General category: \$8.8 million (720.2 mt multiplied by \$5.55/lb); Harpoon category: \$623,690 (46 mt multiplied by \$6.15/lb); Purse Seine category: \$0 (0 mt multiplied by \$3.21/lb); Longline category: \$2.2 million (218.6 mt multiplied by \$4.52/lb); and Trap category: \$10,556 (1.2 mt multiplied by \$3.99/lb). Note that these revenues are likely an underestimation for the General and Harpoon categories, which typically receive additional quota from the Reserve category (*i.e.*, from the baseline Reserve subquota, and from the up to 10 percent of the U.S. baseline quota that could be carried forward from the previous year's underharvest). These revenues are likely an overestimation for the Longline and Trap categories, which do not typically land their entire quotas allocated for incidental bluefin tuna catch. For comparison to these revenue estimations, in 2021, gross revenues were approximately \$12.0 million, broken out by

category as follows: \$10.5 million for the General category, \$755,924 for the Harpoon category, \$0 for the Purse Seine category, \$753,067 for the Longline category, and \$0 for the Trap category.

No affected entities would be expected to experience negative economic impacts as a result of this action. On the contrary, each of the bluefin tuna quota categories would increase relative to the baseline quotas that applied in prior years, and thus economic impacts would be expected to be positive.

To estimate the potential average ex-vessel revenues for each permit holder that could result from this action for bluefin tuna, NMFS divided the potential annual gross revenues for the General, Harpoon, Purse Seine, and Trap categories by the number of permit holders. For the Longline category, NMFS divided the potential annual gross revenues by the number of permit holders that are IBQ share recipients. This is an appropriate approach for bluefin tuna fisheries, in particular, because available landings data (weight and ex-vessel value of the fish in price-per-pound) allow NMFS to calculate the gross revenue earned by a permit holder on a successful trip. The available data (particularly from non-Longline permit holders) do not, however, allow NMFS to calculate the effort and cost associated with each successful trip (*e.g.*, the cost of gas, bait, ice, etc.), so net revenue for each permit holder cannot be calculated. As a result, NMFS analyzes the average impact of the alternatives among all permit holders in each category using gross revenues. The potential annual gross revenues reflect the analysis above, in which the Purse Seine category quota was divided among the General and Longline categories.

Success rates for catching and landing bluefin tuna vary widely across permit holders in each category (due to extent of vessel effort and availability of commercial-sized bluefin tuna to permit holders where they fish), but for the sake of estimating potential revenues per permit holder, category-wide revenues can be divided by the

number of permits in each category. For the Longline fishery, category-wide revenue is divided by the number of permits that received IBQ shares to determine potential revenue per the 136 permit holders that are IBQ share recipients, as indicated below, and actual revenues would depend, in part, on each permit holder's IBQ in 2022. It is unknown what portion of HMS Charter/Headboat permit holders actively participate in the bluefin tuna fishery. HMS Charter/Headboat vessels may fish commercially under the General category quota and retention limits. Therefore, NMFS is estimating potential General category ex-vessel revenue changes using the number of General category permit holders only.

Considering the number of permit holders and estimated gross revenues listed above, under the current subquotas, estimated potential 2022 bluefin tuna revenues on a per permit holder basis under Alternative A1, the no action alternative, could be \$3,228 for the General category permit holders; \$17,819 for the Harpoon category permit holders; \$0 for the Purse Seine category (no active vessels); \$16,010 for the Longline category (using 136 IBQ share recipients); and \$5,279 for the Trap category permit holders. Considering the number of permit holders and estimated gross revenues listed above and the subquotas in this action, estimated potential 2022 bluefin tuna revenues on a per permit holder basis under the preferred alternative could be \$3,407 for the General category permit holders; \$18,865 for the Harpoon category permit holders; \$0 for the Purse Seine category (no active vessels); \$16,912 for the Longline category (using 136 IBQ share recipients); and \$5,279 for the Trap category permit holders.

As noted above, there are no active purse seine vessels landing bluefin tuna, but Purse Seine category participants do lease bluefin tuna quota to Atlantic Tunas Longline permit holders through the IBQ Program system. As described in the FEIS for Amendment 13, the recent lease price for Purse Seine category quota is \$1.08-\$1.25/lb. Under Alternative A1, if the full 55 mt of Purse Seine quota were leased to the Longline

category at \$1.25/lb, revenue for Purse Seine category participants would be \$151,568, or \$30,314 per participant (\$151,568 divided by 5 participants). Under Alternative A2, if the full 58.1 mt of Purse Seine quota were leased to the Longline category, revenue for Purse Seine category participants would be \$160,111, or \$32,022 per participant.

Because the directed commercial categories have underharvested their subquotas in recent years, the potential increases in ex-vessel revenues under both alternatives likely overestimate the probable economic impacts to permit holders in those categories relative to recent conditions. Additionally, there has been substantial interannual variability in ex-vessel revenues in each category in recent years, due to recent changes in bluefin tuna availability and other factors. Overall, because the U.S. quota has not been fully harvested in recent years and because the increase in quota under Alternative A2 is relatively minor, the expected economic impacts on individual permit holders as a result of this action is minor.

For northern albacore, NMFS analyzed three alternatives. Alternative B1, the no action alternative, would maintain the current U.S. baseline northern albacore quota of 632.4 mt. Alternative B2 would implement the 2021 northern albacore ICCAT recommendation that increased the annual U.S. baseline northern albacore quota to 711.5 mt. Alternative B3 would implement the 2021 ICCAT recommendation for northern albacore by establishing an annual baseline quota of 711.5 mt (the same level as in Alternative B2 for 2022) and would analyze and anticipate implementation of subsequent annual quotas set consistent with the management procedure's harvest control rule, with a maximum of 950 mt, consistent with the process set out in Recommendation 21-04. This quota would be adjusted annually for overharvest and underharvest consistent with existing regulations and ICCAT recommendations.

NMFS does not subdivide the U.S. northern albacore quota into category subquotas. The most recent ex-vessel average price per pound information is used to

estimate potential ex-vessel gross revenues. Potential annual gross revenues are divided by the total number of Atlantic tunas or Atlantic HMS permit holders that are authorized to retain and sell northern albacore, however, note that not all permit holders will sell northern albacore each year. As described for bluefin tuna, this analysis excludes HMS Charter/Headboat permit holders and includes the 136 Atlantic Tunas Longline permit holders that received IBQ shares. In addition, Trap category permit holders cannot retain northern albacore. The total number of permit holders that would potentially land northern albacore is 2,901 (2,730 in the Atlantic Tunas General category; 35 in the Atlantic Tunas Harpoon category; 136 in the Atlantic Tunas Longline category (IBQ share recipients)). If the entire quota is harvested under Alternative B1, the no action alternative, estimated annual gross revenues would be \$1.75 million (632.4 mt ww/1.25 multiplied by \$1.57/lb dressed weight (dw)) and average annual revenue across all permit holders would be \$604 (\$1.75 million divided by 2,901 permit holders). If the entire quota is harvested under Alternative B2, estimated annual gross revenues would be \$1.97 million (711.5 mt ww/1.25 multiplied by \$1.57/lb dw) and average annual revenue across all permit holders would be \$679 (\$1.97 million divided by 2,901 permit holders). If the entire maximum quota is harvested under Alternative B3, the preferred alternative, estimated annual gross revenues would be \$2.63 million (950 mt ww/1.25 multiplied by \$1.57/lb dw) and average annual revenue across all permit holders would be \$907 (\$2.63 million divided by 2,901 permit holders). In the short-term, Alternative B3 would set the same quota and produce the same estimated revenue as Alternative B2.

Because the directed commercial fishery has underharvested the quota in recent years, the potential increases in ex-vessel revenues under the three analyzed alternatives likely overestimate the probable economic impacts relative to recent conditions. Additionally, there has been substantial interannual variability in ex-vessel revenues in recent years, due to recent changes in northern albacore availability and other factors.

Overall, because the U.S. quota has not been fully harvested in recent years and because the increase in quota under Alternative B3 is relatively minor, the expected economic impacts on individual permit holders as a result of this action is minor.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule and shall designate such publications as “small entity compliance guides.” The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a webpage that also serves as small entity compliance guide (the guide) was prepared. This final rule and the guide are available on the HMS Management Division website at <https://www.fisheries.noaa.gov/action/changes-atlantic-bluefin-tuna-and-north-atlantic-albacore-quotas-proposed> or by contacting Carrie Soltanoff at carrie.soltanoff@noaa.gov or 301-427-8503.

List of Subjects in 50 CFR Part 635

Fisheries, Fishing, Fishing vessels, Foreign relations, Imports, Penalties, Reporting and recordkeeping requirements, Statistics, Treaties.

Dated: May 25, 2022.

Samuel D. Rauch, III

Deputy Assistant Administrator for Regulatory Programs,
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 635 is amended as follows:

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

1. The authority citation for part 635 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.*; 16 U.S.C. 1801 *et seq.*

2. In § 635.27, revise paragraphs (a) introductory text, (a)(1)(i), (a)(2) and (3), (a)(4)(i), (a)(5), (a)(7)(i) and (ii), and (e)(1) to read as follows:

§ 635.27 Quotas.

(a) *Bluefin tuna.* Consistent with ICCAT recommendations, and with paragraph (a)(10)(iv) of this section, NMFS may subtract the most recent, complete, and available estimate of dead discards from the annual U.S. bluefin tuna quota, and make the remainder available to be retained, possessed, or landed by persons and vessels subject to U.S. jurisdiction. The remaining baseline annual U.S. bluefin tuna quota will be allocated among the General, Angling, Harpoon, Purse Seine, Longline, Trap, and Reserve categories, as described in this section. Bluefin tuna quotas are specified in whole weight. The baseline annual U.S. bluefin tuna quota is 1,316.14 mt, not including an additional annual 25-mt allocation provided in paragraph (a)(3) of this section. The bluefin quota for the quota categories is calculated through the following process. First, 68 mt is subtracted from the baseline annual U.S. bluefin tuna quota and allocated to the Longline category quota. Second, the remaining quota is divided among the categories according to the following percentages: General—47.1 percent (587.9 mt); Angling—19.7 percent (245.9 mt), which includes the school bluefin tuna held in reserve as described under paragraph (a)(7)(ii) of this section; Harpoon—3.9 percent (48.7 mt); Purse Seine—18.6 percent (232.2 mt); Longline—8.1 percent (101.1) plus the 68-mt allocation (*i.e.*, 169.1 mt total not including the 25-mt allocation from paragraph (a)(3)); Trap—0.1 percent (1.2 mt); and Reserve—2.5 percent (31.2 mt). NMFS may make inseason and annual adjustments to quotas as specified in paragraphs (a)(9) and (10) of this section, including quota adjustments as a result of the annual reallocation of Purse Seine quota described under paragraph (a)(4)(v) of this section.

(1) * * *

(i) Catches from vessels for which General category Atlantic Tunas permits have been issued and certain catches from vessels for which an HMS Charter/Headboat permit has been issued are counted against the General category quota in accordance with § 635.23(c)(3). Pursuant to paragraph (a) of this section, the amount of large medium and giant bluefin tuna that may be caught, retained, possessed, landed, or sold under the General category quota is 587.9 mt, and is apportioned as follows, unless modified as described under paragraph (a)(1)(ii) of this section:

(A) January 1 through the effective date of a closure notice filed by NMFS announcing that the January subquota is reached, or projected to be reached under § 635.28(a)(1), or through March 31, whichever comes first—5.3 percent (31.2 mt);

(B) June 1 through August 31—50 percent (293.9 mt);

(C) September 1 through September 30—26.5 percent (155.8 mt);

(D) October 1 through November 30—13 percent (76.4 mt); and

(E) December 1 through December 31—5.2 percent (30.6 mt).

* * * * *

(2) *Angling category quota.* In accordance with the framework procedures of the Consolidated HMS FMP, prior to each fishing year, or as early as feasible, NMFS will establish the Angling category daily retention limits. In accordance with paragraph (a) of this section, the total amount of bluefin tuna that may be caught, retained, possessed, and landed by anglers aboard vessels for which an HMS Angling permit or an HMS Charter/Headboat permit has been issued is 245.9 mt. No more than 2.3 percent (5.7 mt) of the annual Angling category quota may be large medium or giant bluefin tuna. In addition, no more than 10 percent of the annual U.S. bluefin tuna quota, inclusive of the allocation specified in paragraph (a)(3) of this section, may be school bluefin tuna (*i.e.*, 134.1 mt). The Angling category quota includes the amount of school bluefin tuna held in

reserve under paragraph (a)(7)(ii) of this section. The size class subquotas for bluefin tuna are further subdivided as follows:

(i) After adjustment for the school bluefin tuna quota held in reserve (under paragraph (a)(7)(ii) of this section), 52.8 percent (57.7 mt) of the school bluefin tuna Angling category quota may be caught, retained, possessed, or landed south of 39°18' N. lat. The remaining school bluefin tuna Angling category quota (51.6 mt) may be caught, retained, possessed or landed north of 39°18' N. lat.

(ii) An amount equal to 52.8 percent (56 mt) of the large school/small medium bluefin tuna Angling category quota may be caught, retained, possessed, or landed south of 39°18' N. lat. The remaining large school/small medium bluefin tuna Angling category quota (50.1 mt) may be caught, retained, possessed or landed north of 39°18' N. lat.

(iii) One third (1.9 mt) of the large medium and giant bluefin tuna Angling category quota may be caught retained, possessed, or landed, in each of the three following geographic areas: North of 39°18' N. lat.; south of 39°18' N. lat., and outside of the Gulf of Mexico; and in the Gulf of Mexico. For the purposes of this section, the Gulf of Mexico region includes all waters of the U.S. EEZ west and north of the boundary stipulated at 50 CFR 600.105(c).

(3) *Longline category quota.* Pursuant to paragraph (a) of this section, the total amount of large medium and giant bluefin tuna that may be caught, discarded dead, or retained, possessed, or landed by vessels that possess Atlantic Tunas Longline category permits is 169.1 mt. In addition, 25 mt shall be allocated for incidental catch by pelagic longline vessels fishing in the Northeast Distant gear restricted area, and subject to the restrictions under § 635.15(b)(8).

(4) * * *

(i) *Baseline Purse Seine quota.* Pursuant to this paragraph (a), the baseline amount of large medium and giant bluefin tuna that may be caught, retained, possessed, or landed

by vessels that possess Atlantic Tunas Purse Seine category permits is 232.2 mt, unless adjusted as a result of inseason and/or annual adjustments to quotas as specified in paragraphs (a)(9) and (10) of this section; or adjusted (prior to allocation to individual participants) based on the previous year's catch as described under paragraph (a)(4)(v) of this section. Annually, NMFS will make a determination when the Purse Seine fishery will start, based on variations in seasonal distribution, abundance or migration patterns of bluefin tuna, cumulative and projected landings in other commercial fishing categories, the potential for gear conflicts on the fishing grounds, or market impacts due to oversupply. NMFS will start the bluefin tuna purse seine season between June 1 and August 15, by filing an action with the Office of the Federal Register, and notifying the public. The Purse Seine category fishery closes on December 31 of each year.

* * * * *

(5) *Harpoon category quota.* The total amount of large medium and giant bluefin tuna that may be caught, retained, possessed, landed, or sold by vessels that possess Harpoon category Atlantic Tunas permits is 48.7 mt. The Harpoon category fishery commences on June 1 of each year, and closes on November 15 of each year.

* * * * *

(7) * * *

(i) The total amount of bluefin tuna that is held in reserve for inseason or annual adjustments and research using quota or subquotas is 31.2 mt, which may be augmented by allowable underharvest from the previous year, or annual reallocation of Purse Seine category quota as described under paragraph (a)(4)(v) of this section. Consistent with paragraphs (a)(8) through (10) of this section, NMFS may allocate any portion of the Reserve category quota for inseason or annual adjustments to any fishing category quota.

(ii) The total amount of school bluefin tuna that is held in reserve for inseason or annual adjustments and fishery-independent research is 18.5 percent (24.8 mt) of the total

school bluefin tuna Angling category quota as described under paragraph (a)(2) of this section. This amount is in addition to the amounts specified in this paragraph (a)(7)(i). Consistent with paragraph (a)(8) of this section, NMFS may allocate any portion of the school bluefin tuna Angling category quota held in reserve for inseason or annual adjustments to the Angling category.

* * * * *

(e) * * *

(1) *Annual quota.* Consistent with ICCAT recommendations, the ICCAT northern albacore management procedure, and domestic management objectives, the baseline annual quota, before any adjustments, is 711.5 mt. The total quota, after any adjustments made per paragraph (e)(2) of this section, is the fishing year's total amount of northern albacore tuna that may be landed by persons and vessels subject to U.S. jurisdiction.

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